

**United States Department of Labor
Employees' Compensation Appeals Board**

R.C., Appellant

and

**SOCIAL SECURITY ADMINISTRATION,
REGION IV, Atlanta, GA, Employer**

)
)
)
)
)
)
)
)
)

**Docket No. 14-1969
Issued: February 2, 2015**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Judge

ALEC J. KOROMILAS, Alternate Judge

JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 10, 2014 appellant, through his attorney, filed a timely appeal from the July 16, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established that he sustained an incontinence condition consequential to his accepted work injuries that caused work-related disability on or after June 3, 2013.

FACTUAL HISTORY

On August 17, 2006 appellant, then a 45-year-old claims representative, filed a traumatic injury claim alleging that on August 17, 2006 he entered a restroom at work and he slipped due

¹ 5 U.S.C. §§ 8101-8193.

to a leaking urinal. He indicated that he had to hold onto a partition to keep from falling down. OWCP accepted that appellant sustained a lumbar sprain and lumbar stenosis.

On January 11, 2007 Dr. Juris Shibayama, an attending Board-certified orthopedic surgeon, performed OWCP-authorized surgery, including L4-5 laminectomy, bilateral foraminotomies, and fusion with instrumentation and bone graft. Appellant returned to work for four hours a day on March 21, 2007.

In an October 17, 2007 report, Dr. Shibayama noted that appellant had been doing very well following his L4-5 fusion until he was rear-ended in a motor vehicle accident on August 2, 2007 by a vehicle he thought was going 30 to 40 miles an hour. He indicated that when appellant was seen in the emergency room he was extremely sore and he had episodes of complete buttock numbness and difficulty controlling his urine and bowel, requiring him to rush to the bathroom. On October 22, 2007 Dr. Shibayama performed cervical surgery on appellant (between the C4 and C7 levels) due to his motor vehicle accident. He indicated that, prior to the August 2, 2007 accident, appellant had no signs or symptoms of bladder or bowel issues.

Appellant stopped work on March 14, 2011 and OWCP accepted his claim for a recurrence of disability beginning that date. He was placed on the periodic compensation rolls.

On April 8, 2011 Dr. Shibayama performed OWCP-authorized L3-4 laminectomy, bilateral foraminotomies, and fusion with instrumentation. On June 8, 2011 he noted that appellant was having bowel and bladder incontinence. OWCP-authorized appellant to undergo spinal cord stimulator implant surgery on September 19, 2012. In an October 16, 2012 report, Dr. Shibayama indicated that appellant was pleased with the results of the spinal cord stimulator.

On October 30, 2012 Dr. Shibayama indicated that appellant could start working four hours a day for three weeks and could increase his work hours to six and eight hours a day over three-to-four week intervals. He stated that appellant could not bend, twist, or lift greater than 10 pounds and that he could not drive more than 20 minutes at a time because the spinal cord stimulator had to be turned off while driving.

On November 8, 2012 the employing establishment advised OWCP that the job it was offering to appellant did not require driving, but that he wanted a job within 20 miles from his home. The record contains an internet map service printout showing that the distance from his home to his workplace was approximately 21 miles, a drive which took approximately 27 minutes.

On November 17, 2012 appellant accepted the modified-duty job of social insurance specialist for four hours a day. By January 29, 2013 he had gradually increased his work hours to eight hours per day.

In December 18, 2012 and January 1, 2013 reports, Dr. Shibayama continued to recommend that appellant not drive more than 20 minutes to work due to his having to turn off his spinal cord stimulator. In an April 30, 2013 report, he noted that appellant was doing well post fusion surgery and indicated that his spinal cord stimulator was helping his condition. Dr. Shibayama recommended that appellant not drive more than 20 minutes at a time because he has to turn off the spinal cord stimulator, which in turn caused a severe increase in pain that

could be incapacitating and might render him unable to work. He recommended a change in work location but he did not mention any incontinence issues.

On May 13, 2013 Dr. Shibayama noted that appellant reported doing well with his spinal cord stimulator. He stated that appellant reported that he recently had a transient ischemic accident and had been taken to the emergency room following a black out where he found himself on the floor. Appellant also stated that he experienced an episode of urinary incontinence at work. Dr. Shibayama noted that fluoroscopic images from appellant's spinal cord stimulator showed that the left lead had pulled back, but he noted that this would not explain appellant's urinary problem. He indicated that he would reprogram the spinal cord stimulator to make sure that there was no stimulation. Dr. Shibayama noted that, since appellant recently experienced a transient ischemic accident, it was reasonable to refer him to an urologist to evaluate possible compression as he might be experiencing a neurogenic bladder.

Appellant stopped work on May 17, 2013 and has not returned. On May 30, 2013 the employing establishment proposed to remove him from his job due to inappropriate conduct of a sexual nature with three coworkers. Appellant took annual and sick leave through May 31, 2013 and then began to take leave without pay on June 3, 2013 prior to his retirement. The employing establishment stated that it did not terminate appellant because he had filed for disability retirement.

On June 3, 2013 Dr. Troy Sofinowski, an attending Board-certified urologist, indicated that appellant saw him for an incontinence problem. He did not provide an opinion on the cause of this condition, but noted that additional testing would be needed if appellant failed medical management.

In June 4, 2013 reports, Dr. Shibayama noted that appellant had an episode of complete incontinence at work on May 9, 2013. He indicated, however, that it was not an incident of true incontinence. On June 4, 2013 Dr. Shibayama stated that appellant urgently needed a computed tomography (CT) myelogram due to his incontinence. The testing was performed on June 10, 2012.

In a June 11, 2013 report, Dr. Shibayama noted the CT myelogram showed that the spinal cord stimulator was in the expected position, but that there were mild-to-moderate L2 canal stenosis and postsurgical changes from L3 to L5. He posited that appellant was experiencing symptoms at L2-3 and recommended that he have an epidural injection and continue to stay off work. Dr. Shibayama stated that if appellant did not respond to this treatment L2-3 laminectomy surgery would be considered.

In a June 13, 2013 report, Dr. William Newton, an attending Board-certified physical medicine and rehabilitation physician, noted that appellant's urology testing indicated that he had bladder nerve irritation and a significant decrease in urgency since he started Flowmax. He noted that appellant's CT myelogram was unremarkable with no compression of the spine to correlate with his incontinence. Dr. Newton noted appellant's spinal cord stimulator had been reprogrammed approximately 10 days prior and that he was getting better coverage for his legs. He indicated that appellant's main complaints focused on his upper and middle back, between his scapula, but he did not discuss appellant's ability to work.

On June 10 and 28, 2013 appellant filed CA-7 forms, claim for compensation, alleging entitlement to compensation for total disability from June 3 to 14, 2013 and June 17 to 28, 2013. A Notification of Personnel Action (Form SF-50) indicated that he filed for disability retirement on June 24, 2013.

In June 21 and July 12, 2013 letters, OWCP informed appellant that he needed to submit medical evidence in support of his compensation claim. In a July 15, 2013 telephone call to OWCP, appellant advised that he quit his job due to urinary incontinence. OWCP informed him that Dr. Newton had stated that there was no compression of the spinal cord to correlate with the incontinence.

In a July 15, 2013 report, Dr. Shibayama stated that appellant seemed to be getting progressively worse which he felt was a continuation of his work-related injury. He asserted that appellant had bowel and bladder incontinence because of his stenosis, which had been present since early June 2013. Dr. Shibayama posited that appellant was unable to work.

On July 18, 2013 Dr. Shibayama indicated that appellant had been doing relatively well until approximately early May 2013. He noted that appellant was having issues with incontinence and that he experienced no improvement through his urologist. Dr. Shibayama indicated that appellant had been unable to work for the past couple of months. He noted that, on examination, appellant was very distressed and stated that he had an overweight body habitus at 270 pounds. Dr. Shibayama found that appellant had 5/5 strength and intact sensation. He noted that appellant's urinary incontinence was of concern and indicated that he needed to undergo L2-3 laminectomy as soon as possible.

In a July 25, 2013 report, Dr. Shibayama requested L2-3 surgery and stated that delay would result in continued incontinence. On July 31, 2013 he performed L2-3 laminectomy surgery. On August 26, 2013 Dr. Sofinowski reported that appellant's urinary incontinence had improved since his July 31, 2013 surgery. He did not provide any opinion on the cause of appellant's urinary symptoms.

In a September 12, 2013 report, Dr. Shibayama indicated that appellant was six weeks post L2-3 laminectomy and that his urinary symptoms were better, but had not resolved. He opined that it would take appellant a year to recover due to the severity of his stenosis symptoms and referred appellant to a new pain management specialist at appellant's request.

In an October 21, 2013 decision, OWCP denied appellant's claim for compensation from June 3 to 14, 2013 and June 17 to 28, 2013. It stated that Dr. Shibayama provided no objective findings with medical rationale indicating that appellant's urinary incontinence was causally related to the accepted work injury. OWCP noted that the July 31, 2013 back surgery performed by Dr. Shibayama was not authorized. It also denied a request for electroflowmetry and urine capacity measure, because it was not established that appellant's incontinence was causally related to his work injury.

Appellant underwent a new myelogram on January 3, 2014 due to Dr. Shibayama's concerns of L2-3 stenosis, but he did not indicate in his January 14, 2014 report that there were

any new findings. Dr. Shibayama continued to produce reports in which he indicated that appellant should be kept off work.

Appellant requested a telephonic hearing with an OWCP hearing representative. During the May 13, 2014 hearing, he testified that he requested retirement after having urination problems while interviewing a claimant. Appellant indicated that he hardly had any feeling below his waist due to his stimulator machine. He testified that June 3, 2013 constituted the second occasion that he had incontinence problems at work. Appellant stated that, since his last surgery, the frequent urination problems had decreased by 70 percent.

In a November 27, 2013 report, Dr. Shibayama noted that appellant's L2-3 stenosis and neurogenic claudication and July 30, 2013 emergency surgery were due to his August 17, 2006 injury because his prior L4-5 surgery had been delayed. He opined that appellant's total disability started June 4, 2013, the first time he saw appellant after his bladder incontinence on May 19 and June 3, 2013.

In a June 3, 2014 report, Dr. Shibayama noted that appellant's injections helped to some degree. He stated that appellant's thigh burning was reduced but was still present. Appellant's x-rays showed that his hardware was in excellent position and that the fusions consolidated extremely well. Dr. Shibayama noted that appellant's bladder issues were slowly improving to some degree and recommended that he continue off work.

In a July 16, 2014 decision, the hearing representative affirmed OWCP's October 21, 2013 decision. She found that the medical evidence did not show that appellant had work-related disability on or after June 3, 2013 due to his accepted work-related conditions or that he sustained incontinence as a consequence of his accepted work-related conditions.

LEGAL PRECEDENT

The general rule respecting consequential injuries is that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employee's own intentional conduct.² A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, he or she must present rationalized medical opinion evidence.³

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ The medical evidence required to establish a causal

² S.S., 59 ECAB 315 (2008).

³ Charles W. Downey, 54 ECAB 421 (2003).

⁴ J.F., Docket No. 09-1061 (issued November 17, 2009).

relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.⁵

Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues, which must be proved by a preponderance of reliable, probative and substantial medical evidence.⁶

ANALYSIS

The Board finds that appellant did not establish that he sustained disability on or June 3, 2013 due to a work-related incontinence condition or the direct effects of his accepted work injuries, lumbar sprain, and lumbar stenosis.

In the present claim, appellant contended that he had to stop work and retire because of incontinence caused by his work-related back injury. There is no mention of urinary issues until the October 17, 2007 report of Dr. Shibayama, an attending Board-certified orthopedic surgeon, when he noted that appellant had been doing very well following his L4-5 fusion until he was rear-ended on August 2, 2007 by a motor vehicle he thought to be going 30 to 40 miles an hour. He indicated that appellant was seen in the emergency room and had been extremely sore. Appellant experienced episodes of complete buttock numbness and difficulty controlling his urine and bowel, which caused him to rush to the bathroom. On October 22, 2007 Dr. Shibayama performed cervical surgery on appellant (between the C4 and C7 levels) due to his motor vehicle accident. He indicated that, prior to the August 2, 2007 accident, appellant had no symptoms of bladder or bowel issues. Appellant's motor vehicle accident, any subsequent injuries or incontinence caused by that accident are not work related.

In reports dated from June and July 2013, Dr. Shibayama first asserted that appellant had been unable to work beginning June 3, 2013 due to incontinence related to his work-related stenosis. He did not explain how appellant's incontinence condition was due to his accepted work injuries. Explanation on that point is important because appellant's incontinence did not begin until his motor vehicle accident in 2007, which required cervical surgery. Dr. Shibayama also failed to discuss the significance of appellant's early-May 2013 transient ischemic accident, which caused him to black out and fall to the floor. Appellant had incontinence a few days after this incident which occurred shortly before he stopped work.

The Board notes that there is no opinion from a physician specializing in incontinence conditions that appellant's incontinence problems were caused by his accepted work injuries. There was no mention of incontinence in the medical records between September 6, 2011 and May 13, 2013, when appellant saw Dr. Newton, a Board-certified physical medicine and rehabilitation physician, who noted that appellant had recently had a transient ischemic accident

⁵ See *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

⁶ *W.D.*, Docket No. 09-658 (issued October 22, 2009).

and blacked out, falling to the floor, and then a few days later had urinary incontinence. Dr. Newton did not provide an opinion on the cause of appellant's incontinence, but he noted that appellant's CT myelogram was unremarkable with no compression of the spine to correlate with his incontinence. No other physician of record commented on this aspect of the medical evidence. Appellant did not submit a fully-rationalized medical report to support his claim that his incontinence condition was related to his accepted work injuries.

For these reasons, appellant did not meet his burden of proof to establish that he sustained the condition of incontinence because of his accepted work injuries. As he has not established such a consequential injury, he has not established that he had work-related disability on or after June 3, 2013 due to an incontinence condition. Moreover, appellant did not submit rationalized medical evidence showing that he had work-related disability on or after June 3, 2013 due to the effects of his accepted work injuries, lumbar sprain, and lumbar stenosis.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained the condition of incontinence as a consequence of his accepted work injuries. The Board further finds that he did not meet his burden of proof to establish that he had work-related disability on or after June 3, 2013, either due to a work-related incontinence condition or the direct effects of his accepted work injuries.

ORDER

IT IS HEREBY ORDERED THAT the July 16, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 2, 2015
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board